



July 14, 2011

Donald S. Clark
Secretary of the Commission
Federal Trade Commission
Office of the Secretary
Room H-113 (Annex W)
600 Pennsylvania Ave, N.W.
Washington, D.C. 20580

RE: Interagency Working Group on Food Marketed to Children: General Comments
and Proposed Marketing Definitions: FTC Project No. P094513

Dear Secretary Clark:

The Independent Bakers Association ("IBA"), headquartered in Washington D.C., is an association of over 200 wholesale bakeries and allied industry trades. These wholesale bakeries are small to medium-sized businesses, and most are family owned.

We are pleased to offer comments on the proposal by the Interagency Working Group ("IWG") to restrict food marketing in the United States. In accordance with the IWG's Request for Comments, this letter provides general comments and comments on the proposed marketing definitions, and our comments on the proposed nutrition principles are provided separately.

IBA supports the goal of promoting healthy diets and lifestyles for children. However, the IWG's proposed restrictions are misguided and should be withdrawn.

In Practical Effect, the Restrictions Would be Mandatory, not Voluntary.

IWG agencies have extensive regulatory authority over the production, marketing, and sale of food in the United States. Consequently, most companies would likely conclude

that it would be unwise not to “voluntarily” comply with the restrictions. The IWG proposal states on page 15 that “[b]y the year 2016, all food products [covered by the proposal] should meet two basic nutrition principles.” Most of the regulated industry would probably determine that compliance with that timetable is, as a practical matter, mandatory.

In addition, companies who do not comply with the restrictions could find themselves subject to private litigation or actions by state agencies that might adopt and enforce the restrictions. Thus, the restrictions would in effect be binding rules in the guise of “voluntary” guidance.

The Proposed Marketing Definitions are Overly Broad.

The proposed definitions of activities that constitute “marketing to children” are taken from the FTC’s 2006 and 2009 data-collection activities regarding marketing expenditures. Putting aside the question of whether the definitions were appropriate for that purpose, they clearly are much too broad for purposes of de facto industry regulation.

The IWG proposes to restrict advertising, packaging, in-store displays, sponsorships, charitable promotions, and other activities. The proposed definitions are so broad that almost all marketing, including marketing to adults, would be covered. For example:

- Advertising for which 80 percent of the target audience are adults would be covered.
- In-store displays that include any depiction of children—such as a photograph of a Little League baseball game—would be covered.
- Packaging which features icons such as Santa Claus would be covered.

The IWG in fact proposes to restrict, not just marketing to children, but marketing to everyone. The IWG has provided no justification for such sweeping and pervasive restrictions.

Education is the Better Approach.

Rather than seeking to regulate such a huge swath of economic activity, the IWG agencies should instead focus on efforts to educate children and parents on the benefits of healthy diets and lifestyles. Initiatives such as USDA’s “My Plate” and the First Lady’s

“Let’s Move” are good examples of those efforts. “My Plate,” “Let’s Move,” and similar programs help Americans understand how to make good diet and lifestyle choices and understand the reasons why those choices are important.

“Let’s Move,” of course, emphasizes the importance of exercise. The program’s web site points out that “[p]hysical activity is an essential component of a healthy lifestyle.”¹

IBA believes that the IWG agencies’ resources would be better spent on such educational initiatives to promote improved diets and more exercise than on efforts to effectively ban marketing activities that are longstanding and are directed largely to adults.

For all these reasons, we urge the IWG to withdraw the proposed restrictions.

Thank you for your consideration of our comments. Any questions regarding our comments may be directed to the undersigned.

Sincerely,

Nicholas A. Pyle
President, Independent Bakers Association
1223 Potomac Street, NW
Washington, D.C. 20007

cc: IBA Board of Directors

¹ <http://www.letsmove.gov/get-active>